?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
%DATED: 06.02.2019
*CORAM
THE HON-BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON-BLE MR.JUSTICE C.T.SELVAM

+W.A.(MD) No.362 of 2016
C.M.P.(MD)No.2327 of 2016

#1. The District Education Officer,
V.O.C. Government Higher Secondary School,
Kovilpatti, Thoothukudi District.

2. The District Education Officer,
S.V. Government Higher Secondary School Campus,
Thoothukudi.

3. The Director of School Education (Secondary),
College Road, Chennai 600 006.

4. The Secretary,
Government of Tamil Nadu,
Education Department,
fort. St. George, Chennai 600 009 ... Appellant

vs.

$1. M.Panneer Dass
Secondary Grade Teacher,
T.D.T.A.Mary Soundarapandian
High School, Pichivillai,
Vellanvillai (Via), Tuticorin District.

2. The Correspondent,
T.D.T.A.Mary Soundarapandian
High School, Pichivillai,
Vellanvillai (Via), Tuticorin District. ... Respondents
Prayer: Writ Appeal is filed under Clause 15 of the Letters Patent, against the order made in W.P.(MD)No.3562 of 2010, dated 24.01.2014.

!For Appellants : Mr.V.R.Shanmuganathan,
Special Government Pleader

^For Repondents : Mr.Joseph Thatheus Jerome

:JUDGMENT
(Judgment of the Court was made by S.MANIKUMAR, J)

Instant writ appeal has been filed against the order, made in W.P.(MD)No.3562 of 2010, dated 24.01.2014, by which, the writ court, while

allowing the writ petition, directed the appellants to regularise the appointment of the 1st respondent as a Secondary Grade Teacher, from 15.07.2002, with all attendant and monetary benefits, with the specified period.

2. Facts leading to the writ petition are that the 1st respondent was appointed as a Secondary Grade Teacher in 2nd respondent~School on 15.07.2002 in the vacancy arose on 04.06.2002, due to transfer of another teacher. When the School authorities approached the Educational Authorities, for approving his appointment duly made in accordance with the procedure laid down under Rules in the sanctioned post, the District Educational Officer, V.O.C. Government Higher Secondary School, Kovilpatti, Thoothukudi District, 1st appellant herein, passed an order, dated 21.8.2002, refusing to approve her appointment. On the other hand, the first appellant has granted approval of his appointment, with effect from 01.06.2003, as Secondary Grade Teacher, on consolidated pay of Rs.3,000/~ per month and thereafter, his appointment was approved as a Secondary Grade Teacher, with effect from 1.6.2006, in the time scale of pay. Aggrieved by the same, the petitioner has preferred W.P.(MD)No.3562 of 2010, for a writ of Certiorarified Mandamus, to quash the proceedings of the first appellant, made in Na.Ka.No.617/B3/02 No.8~02, dated 21,8.2002 and the consequential proceedings in Na.Ka.No.8/A2/8, dated 18.3.2005 and the further consequential proceedings of the second appellant made in Mu.Mu.No.34Q/A4/07, dated 23.5.2007 and further to direct appellant Nos.1 to 3 to approve the appointment of the 1st respondent, as a Secondary Grade Teacher in time scale of pay, with all benefits and emoluments, from the date of appointment, ie., 15.7.2002, made in the T.D.T.A High School K.Kailapuram, Gangailondan, Tuticorin District by holding G.O.Ms.No.79 Education Department, dated. 14.6.2002, G.O.Ms.No.100, Education Department, dated 27.6.2003 and G.O.Ms.No.130, Education Department, dated 27.9.2004 as void and illegal.

3. The impugned orders, before us, are assailed on two grounds, viz., (1) There are surplus teachers working in other schools, run by the same management and until surplus/excess teachers are deployed in the vacancy, no fresh appointments can be made and any such appointment made, cannot be approved, and (2) As per the Government Order issued by the Government, vacancies of Secondary Grade Teacher arose on 1.6.2002 shall be filled up only by graduate teachers, after considering the line of judgements, viz, 2002 Writ L.R. 173 (Secretary & Correspondent, Uswathun Hasana Oriental (Arabic) Girls Higher Secondary School v. The State of Tamil Nadu); W.A.No. 249 of 2002 etc. Batch (State of Tamil Nadu v. Pallivasal Primary School, Mudukulathur and others) dated 2.4.2004; 2004 Writ L.R. 248 (Viveka Poorana Aided Elementary School v. The Director of Elementary Education & another) W.P(MD).No.1882/2008, dated 10.3.2008 (Roselin Gnanaseeli Princy v. District Elementary Educational Officer, Tirunelveli District and 2 others); W.P(MD).No.2884/2009, dated 10.9.2009 (K. Ponshanthi v. District Elementary Educational Officer, Tirunelveli and another); and W.P(MD).No.13330/2011 (S.lmmanvel Gnanaraj v. Additional Assistant Elementary Educational Officer, Tirunelveli District and 2 others), a learned single Judge in W.P.(MD)No.3562 of 2010, dated 24.01.2014, considering the facts and circumstances of the case, held as follows:

6. In all these judgments, the learned brother Judges of this Court were pleased to reject such ground and pleased to observe that there is no justification to deny the approval on the ground of surplus teachers when the petitioners are fully qualified for being appointed in the sanctioned vacancies and the schools are eligible to retain the said post and the availability of excess teachers cannot be a ground to deny such approval. In view of such legal position, the first ground on which the approval is rejected, cannot be allowed to stand.
7. Regarding the second ground, the G.O referred to in the impugned order is G.O.Ms.No.79, dated 14.6.2002 and that the Government is proposed to create middle grade graduate teachers initially in the Government school having teacher cum pupil ratio at 1:40 for teaching 6 to 8 classes. The Government having found the standard of secondary grade teachers is too low to teach 6 to 8 classes, made necessary amendment in the Rules by creating the post of middle grade teachers under various category under G.O.Ms.No.125, School Education, dated 12.11.2003. As per which, junior grade teacher post is created in all levels. It may be true that G.O.Ms.No.79 dated 14.6.2002 provides for filling up of vacancies as on 1.6.2002 as middle grade graduate teacher. But the G.O cannot be given retrospective effect and the appointments made much before the creation of the post of middle grade graduate teachers, cannot be denied the approval with effect from the date of appointment, as done in the present case. As the proposal created only by Government Order dated 12.11.2003, the appointment duly made ought to have been approved. As already stated, the petitioner is fully qualified to be appointed as Secondary Grade Teacher and he was appointed as Secondary Grade Teacher on 15.7.2002, much before the creation of the post and much before amendment being introduced in the relevant rules. As such, the Educational Authorities ought to have approved his appointment from the date of appointment with all monetary benefits.

8. In the result, the writ petition is allowed as prayed for and the respondent Nos.1 to 3 are directed to regularise the appointment of the petitioner as Secondary Grade Teacher from 15.07.2002 with all attendant and monetary benefits, within a period of eight weeks from the date of receipt of copy of this order.

4. Being aggrieved by the same, appellant has filed the instant writ appeal on various grounds.

Heard the learned counsel appearing for the parties and perused the materials available on record.

5. G.O.Ms.No.79 Education Department, dated. 14.6.2002, reads as follows:
jkpH;ehL muR

RUf;fk;

gs;spfs; ? gs;spfspy; 6. 7. 8 Mfpa tFg;g[fspy; ,ilepiy Mrphpah;fSf;Fg; gjpy; gp/vl;/ jFjp bgw;w Middle Grade Graduate Teachers epakpj;jy; ? Miz btspaplg;gLfpwJ/

??
gs;spf; fy;tp (a{1) j;Jiw

murhiz epiy vz;/79 ehs;: 14/6/2002

1/ muR foj epiy vz;/36. gs;spf;fy;tp ehs;/11/1/95
2/ muR foj vz;/64647~v!;2~96?9 ehs;/27/8/99
3/ bjhlf;ff; fy;tp ,af;Fehpd; foj vz;/45317~,o1~96 ehs; 1/8/2000/

Miz:
eLepiy. cah;epiy kw;Wk; nky;epiyg; gs;spfspy; mt;tg;nghJ
jpUj;jpaikf;fg;gLk; ghlj; jpl;lj;jpw;nfw;g. 6.7.8 Mfpa tFg;g[fspy; M-;fpyk;.
fzpjk;. mwptpay; Mfpa ghl-;fis ,ilepiy Mrphpah;fshy; ifahs ,aYtjpy;iy/ ,jdhy;
fy;tpapd; juk; Muk;g epiyapnyna ghjpf;fg;gLfpwJ/ khz;g[kpF Kjyikr;rh; mth;fsJ
15 mk;r-;fis cs;slf;fpa jpl;l-;fspy; ghyh; gs;sp Kjy; gy;fiyf; fHfk; tiu
fy;tpiaj; juk; cah;j;Jtjpy; ftdk; brYj;Jjy; vd;w jpl;lKk;; ml-;Fk;/ ,jidf;
fUj;jpy; bfhz;L gs;spfspy; 6.7.8 Mfpa tFg;g[fspy; fy;tpapd; juj;ij cah;j;j
,ilepiy Mrphpah; gzpapl-;fspy; gp/vl;/ jFjp bgw;w Mrphpah;fis epakpg;gJ
Fwpj;J muR jPu Muha;e;jjpy;. jw;nghJ gzpg[hpa[k; ,ilepiy Mrphpah;fs;
Xa;t[bgWk;nghnjh my;yJ gzpj;Jwg;g[bra;a[k;nghnjh my;yJ gjtp cah;tpy;
bry;Yk;nghnjh my;yJ kw;wtifapy; VnjDk; xU fhuzj;jhy; gzpaplk; fhyp
Vw;gLk;nghnjh mt;tif ,ilepiy Mrphpah; gzpapl-;fSf;Fg; gjpy; ,ilepiy gl;ljhhp
Mrphpah; mjhtJ Middle Grade Graduate Teacher vd;w g[jpa gjtpapid gog;goahf
cUthf;fp mg;gjtpfSf;F (1/6/2002 md;iwa epiyapy; Vw;gl;l fhyp
gzpapl-;fs;cl;gl) 2002?2003k; fy;tpahz;L Kjy; gp/vl;/ jFjp bgw;w
Mrphpah;fisf; bfhz;L ,ilepiy Mrphpah; Cjpa tpfpjj;jpnyna (U:/4500?125?7000)
xU Kd; Cjpa cah;t[mspj;J (U:/4625?125?7000) epakpf;f muR mDkjp mspj;J
MizapLfpwJ/
2/ mt;thW ,ilepiy Mrphpah; gzpapl-;fSf;Fg; gjpy; Middle grade graduate
teacher vd;w g[jpa gzpaplj;ij cUthf;Fk;nghJ fPH;f;fz;l epge;jidfisa[k;
fUj;jpy; bfhs;sg;glntz;Lk;/
1) gs;spfspy; 6.7.8 Mfpa tFg;g[fspy; fhyp Vw;gLk; ,ilepiy
Mrphpah; gzpapl-;fSf;F gjpy; ? Middle Grade Graduate Teacher Post g[jpajhf
U:/4625?125?7000 vd;w Cjpa tpfpjj;jpy; cUthf;Fk;nghJ me;je;j ,ilepiy Mrphpah;
gzpapl-;fs; fhyhtjpahdjhff; fUjg;gl ntz;Lk;/ Middle Grade Graduate Teacher
gzpaplj;jpid TLjy; gzpaplk; vd fUjf;TlhJ/
2) Middle Grade Graduate Teacher Post MtJ Kjw;fz; muRg;
gs;spfspy; mJt[k; Mrphpah; khztpah; khzth; tpfpjk; 1:40 cs;s gs;spfspy;
M-;fpyk;. fzpjk;. mwptpay; ghl-;fspilna gp/vl;/ jFjp Mrphpah;fis jw;nghJ
filgpof;fg;gLk; tpfpjhr;rhuj;jpd;go gfph;e;jspf;fyhk;/
3) 6. 7. 8 Mfpa tFg;g[fSf;F Middle Grade Graduate Teacher Post
Vw;gLj;jg;gLtjhy; mjidbahl;o gzp epakd tpjpfSf;F chpa jpUj;jk; btspaplg;gLk;/

4) muR epjp cjtpbgWk; gs;spfisg;bghUj;jtiu Middle Grade Graduate
Teacher Post f;F ,ilepiy Mrphpah; Cjpa tpfpjj;jpy; xU Kd; Cjpa cah;t[
mspf;fg;gLtjhy; mjdhy; Vw;gLk; TLjy; brytpid me;je;j eph;thfnk Vw;Wf; bfhs;s
ntz;Lk;/ ,t;tif Middle Grade Graduate Teacher Post f;F khtl;l thhpahf fUj;JU
mDg;gg; bgw;W murstpy; mDkjp bgw;w gpd;dh;jhd; gzpapl-;fs; epug;gg;glntz;Lk;/
,jidaLj;J chpa rl;l tpjpfSf;F jpUj;jk; btspaplg;gLk;/
3/ xU khtl;lj;jpy; fhyp Vw;gLk; ,ilepiy Mrphpah; gzpapl-;fis xl;L
bkhj;jkhf fzf;fpl;L mjid gs;spfspy; 6. 7. 8 Mfpa tFg;g[fspy; cs;s mjfg;goahd

khzth;fs; vz;zpf;if kw;Wk; gphpt[fSf;nfw;g midj;Jg; gs;spfSf;Fk; tUlh tUlk; gog;goahf rkg-;fpl;L me;je;j Kjd;ikf; fy;tp mYtyh;~khtl;l bjhlf;ff;fy;tp mYtyh;fs; mspf;Fk;goa[k;. mt;thW Middle Grade Graduate Teacher Post id rk g-;fpl;L ,ilepiy Mrphpah; fhyp gzpaplk; Vw;glhj xU gs;spf;F gfph;e;jspf;Fk;nghJ mjw;F